

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC, Case No.: 2:18-cv-04764-AB

Petitioner,

v.

TOBY L. WRIGHT,

Respondent.

**ANSWER TO AMENDED PETITION
TO COMPEL ARBITRATION**

AND

COUNTERCLAIM

Respondent, Toby L. Wright, by and through undersigned counsel hereby files his
“Answer to Amended Petition to Compel Arbitration and Counterclaim” and states as
follows:

ANSWER TO PETITION TO COMPEL ARBITRATION

1. Mr. Wright admits the allegations of paragraph number 1 to the extent that
Mr. Wright received an advance from entities other than Petitioner Thrivest and denies
the rest.

2. Mr. Wright admits paragraph number 2 to the extent that Thrivest
purchased Mr. Wright’s agreement with the other lender and that Mr. Wright received an
additional payment of \$27,602.54 and denies the rest.

3. Mr. Wright admits paragraph number 3 to the extent that his position is that
pursuant to this Court’s Order in case 2:12-md-02323-AB, MDL No. 2323, entered

1 December 8, 2017, (hereinafter “this Court’s Order entered December 8, 2017,”) the
2 agreement between the parties is void and Mr. Wright is only obligated to return the
3 monies advanced to him and denies the rest of the allegations.
4

5 4. Mr. Wright admits paragraph number 4 to the extent that Mr. Wright does
6 not believe he is required to arbitrate a contract rendered void by this Court’s Order and
7 denies the rest.
8

9 5. Mr. Wright admits paragraph number 5 to the extent that Mr. Wright asserts
10 the agreement between the parties is void pursuant to this Court’s Order entered
11 December 8, 2017 and denies the rest.
12

13 6. Mr. Wright lacks sufficient knowledge to admit or deny the allegations of
14 paragraph number 6 and, therefore, denies the allegations.
15

16 7. Mr. Wright denies that his address is 6202 Winston East Drive Phoenix,
17 Arizona 85042 and admits rest of the allegations of paragraph number 7.
18

19 8. Mr. Wright admits the allegations of paragraph number 8.
20

21 9. Mr. Wright admits the allegations of paragraph number 9.
22

23 10. Mr. Wright admits that venue is proper but denies the allegations of
24 paragraph number 10. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial
25 part of the events giving rise to this dispute occurred in the Eastern District of
26 Pennsylvania and also because counter defendant Thrivest is a resident of this judicial
27 district.
28

11. Mr. Wright admits the allegations of paragraph number 11.

1 12. Mr. Wright admits the allegations of paragraph number 12.

2 13. Mr. Wright admits the allegations of paragraph number 13.

3 14. Mr. Wright admits the allegations of paragraph number 14 to the extent that
4 Mr. Wright entered into an agreement, which was subsequently held to void by this
5 Court's Order of December 8, 2017, with Cash4Cases, Inc. and denies the rest.
6

7 15. Mr. Wright denies the allegations of paragraph number 15 because pursuant
8 to this Court's Order entered December 8, 2017, the agreement is void.
9

10 16. Mr. Wright denies the allegations of paragraph number 16.

11 17. Mr. Wright admits the allegations of paragraph number 17 to the extent that
12 Mr. Wright and Petitioner entered into an assignment agreement which was subsequently
13 held to void by this Court's Order of December 8, 2017 and denies the rest.
14

15 18. Mr. Wright lacks sufficient information to admit or deny the allegations
16 contained in paragraph number 18 and, therefore, denies the allegations.
17

18 19. Mr. Wright lacks sufficient information to admit or deny the allegations
19 contained in paragraph number 19 and, therefore, denies the allegations.
20

21 20. Mr. Wright admits that paragraph 20 appears to contain a portion of the
22 void agreement and denies the other allegations of paragraph number 20.

23 21. Mr. Wright admits the allegations of paragraph number 21 to the extent that
24 Petitioner provided Mr. Wright with a payment of \$27,602.54 and denies the rest.
25

26 22. Mr. Wright admits the allegations of paragraph number 22.
27
28

1 23. Mr. Wright lacks sufficient information to admit or deny the allegations
2 contained in paragraph number 23 and, therefore, denies the allegations.

3
4 24. Mr. Wright lacks sufficient information to admit or deny the allegations
5 contained in paragraph number 24 and, therefore, denies the allegations.

6 25. Mr. Wright denies the allegations contained in paragraph number 25.

7
8 26. Mr. Wright admits the allegations of paragraph 26 to the extent that Mr.
9 Wright contends he is not bound by the terms of the assignment agreement between the
10 parties, as said agreement has been rendered void by this Court's Order entered December
11 08, 2017 and denies the rest.

12
13 27. Mr. Wright admits the allegations of paragraph number 27 to the extent that
14 Mr. Wright believes the parties are bound by this Court's Order entered December 8,
15 2017, declaring the agreement between the parties void, and denies the rest.

16
17 28. Mr. Wright admits the allegations of paragraph number 28. However, the
18 Court's Order entered December 8, 2017 properly explains its jurisdiction and its
19 reasoning.

20
21 29. Mr. Wright denies the allegations of paragraph number 29 and is unaware
22 of who is intended by the reference to "Mr. White."

23 30. Mr. Wright admits the allegations of paragraph number 30. However, Mr.
24 Wright contends that pursuant to this Court's Order entered December 8, 2017 the
25 assignment agreement between the parties is void *ab initio* and therefore, no provisions
26 of the agreement are enforceable.
27
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1 31. Mr. Wright admits the allegations of paragraph number 31. However, Mr.
2 Wright contends that pursuant to this Court's Order entered December 8, 2017 the
3 assignment agreement between the parties is void *ab initio* and therefore, no provisions
4 of the agreement are enforceable.
5

6 32. Mr. Wright admits the allegations of paragraph number 32. However, Mr.
7 Wright contends that pursuant to this Court's Order entered December 8, 2017, the
8 assignment agreement between the parties is void *ab initio* and therefore, no provisions
9 of the agreement are enforceable.
10

11 33. Mr. Wright admits the allegations of paragraph number 33. However, Mr.
12 Wright contends that pursuant to this Court's Order entered December 8, 2017, the
13 assignment agreement between the parties is void *ab initio* and therefore, no provisions
14 of the agreement are enforceable.
15

16 34. Mr. Wright admits the allegations of paragraph number 34. However, Mr.
17 Wright contends that pursuant to this Court's Order entered December 8, 2017 the
18 assignment agreement between the parties is void *ab initio* and therefore, no provisions
19 of the agreement are enforceable.
20

21 35. Paragraph 35 calls for a legal conclusion to which no response is necessary.
22 To the extent an answer is necessary, Mr. Wright denies the allegations of paragraph 35.
23

24 36. Paragraph 36 calls for a legal conclusion to which no response is necessary.
25 To the extent an answer is necessary, Mr. Wright denies the allegations of paragraph 36.
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1 37. Paragraph 37 does not require a response. To the extent an answer is
2 necessary, Mr. Wright denies the allegations of paragraph 37 and incorporates by
3 reference his prior responses.
4

5 38. Paragraph 38 calls for a legal conclusion to which no response is necessary.
6 To the extent an answer is necessary, Mr. Wright denies the allegations of paragraph 38.
7

8 39. Paragraph 39 calls for a legal conclusion to which no response is necessary.
9 To the extent an answer is necessary, Mr. Wright denies the allegations of paragraph 39.

10 40. Paragraph 40 calls for a legal conclusion to which no response is necessary.
11 To the extent an answer is necessary, Mr. Wright denies the allegations of paragraph 40.
12

13 41. Mr. Wright admits the allegations of paragraph 41 to the extent that Mr.
14 Wright contends he is not bound by the terms of the assignment agreement between the
15 parties, as said agreement has been rendered void by this Court's Order entered December
16 08, 2017, and denies the rest.
17

18 42. Mr. Wright denies the allegations of paragraph 42. The parties' agreement,
19 albeit subsequently held to be void, called for Pennsylvania law to govern the arbitration
20 provision, not the FAA. *See Amended Petition to Compel Arbitration* 7 ¶ 31.
21

22
23 **COUNTERCLAIM FOR DECLARATORY RELIEF AND ATTORNEYS FEES**

24 Counterclaimant, Toby L. Wright, seeks the following declarations from this
25 Court: (1) a declaration that the agreement between Mr. Wright and Thrivest is void *ab*
26 *initio*; (2) a declaration that Thrivest cannot compel Mr. Wright to arbitrate a dispute
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1 under the void agreement between the parties; and (3) a declaration that the total amount
2 owed to Thrivest by Mr. Wright is \$207,392.93, which represents the total amount Mr.
3 Wright owes to Thrivest based on this Court's Order entered December 8, 2017.
4 Additionally, Mr. Wright requests an award of his reasonable attorneys' fees incurred
5 herein pursuant to Arizona Revised Statute § 12-341.01(A).
6

7 **INTRODUCTION**

8
9 1. Counterclaimant, Toby L. Wright, is a retired professional football player.

10 2. During his six years in the National Football League, Mr. Wright suffered
11 numerous concussions. As a result of these concussions, Mr. Wright suffers from post-
12 concussion syndrome and other cognitive impairments.
13

14 3. As a result of his aforementioned diagnoses, Mr. Wright qualified for a
15 settlement in the National Football League Players' Concussion Injury Litigation, 2:12-
16 md-02323 (E.D. Pa.).
17

18 4. Thrivest funding is in the business of entering into assignment contracts
19 with persons who expect to receive damages or settlements in pending litigation. Under
20 its typical contract, Thrivest will advance a person a portion of their expected damages or
21 settlement in exchange for an assignment of the expected damages or settlement.
22

23 5. Thrivest typically receives an assignment of expected damages or
24 settlement in an amount of at least double what it advances to the litigation participant.
25
26
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1 6. As part of its due diligence, Thrivest conducts extensive investigation into
2 the pending litigation and potential settlement prior to entering into any assignment
3 agreement.
4

5 7. On or about June 25, 2014 a version of the Class Action Settlement
6 Agreement was posted in 2:12-md-02323 (E.D. Pa.) The language in this version of the
7 Settlement relating to the issues in dispute in this case, in particular, the non-assignability
8 clause, has not been changed in any subsequent iterations of the Settlement, including the
9 final version approved this Court and the 3rd Circuit.
10

11 8. In October of 2016, Thrivest, taking advantage of Mr. Wright's distressed
12 financial situation, entered into a predatory assignment agreement with Mr. Wright. This
13 was done despite Thrivest's knowledge of the anti-assignment provisions in the
14 Settlement.
15

16 9. The agreement between Thrivest and Mr. Wright called for Thrivest to
17 receive \$570,000.00 from Mr. Wright's settlement. Under the terms of the Thrivest
18 agreement Mr. Wright only received \$27,602.54 in cash and retirement of a prior
19 assignment agreement under which Mr. Wright had received \$179,790.39.
20
21

22 **PARTIES**

23 10. Counterclaimant, Toby L. Wright is a citizen of Maricopa County, Arizona.
24 At the time the assignment agreement was executed, Mr. Wright was a citizen of
25 California.
26
27
28

11. Upon information and belief, Counterdefendant Thrivest Specialty Funding, LLC (hereinafter “Thrivest”) is citizen of Pennsylvania because its sole member, Joseph R. Genovesi, is a citizen of the Commonwealth of Pennsylvania.

JURISDICTION AND VENUE

12. The Court has subject matter jurisdiction under 28 U.S.C.A. § 1332 because complete diversity of citizenship exists and the amount in controversy exceeds \$75,000.00.

13. Venue is proper pursuant to 28 U.S.C.A. § 1391 because counterdefendant Thrivest is a resident of this judicial district and also because a substantial part of the events giving rise to this dispute occurred in the Eastern District of Pennsylvania.

FACTUAL ALLEGATIONS

14. Case number 2:12-md-02323-AB, MDL No. 2323, *In Re: National Football League Players’ Concussion Injury Litigation* is subject to the jurisdiction of this Court.

15. A settlement agreement has been reached in *In Re: National Football League Players’ Concussion Injury Litigation*. Said agreement prohibits assignment of benefits by class members –

Section 30.1 No Assignment of Claims. Neither the Settlement Class nor any Class or Subclass Representative or Settlement Class Member has assigned, will assign, or will attempt to assign, to any person or entity other than the NFL Parties any rights or claims relating to the subject matter of the Class Action Complaint. Any such assignment, or attempt to assign, to any person or entity other than the NFL Parties any rights or

1 claims relating to the subject matter of the Class Action
2 Complaint will be **void**, invalid, and of no force and effect and
3 the Claims Administrator shall not recognize any such action.

4 Settlement Agreement, ECF No. 6481-1. (Emphasis added).

5 16. On December 8, 2017, this Court entered Orders declaring
6

7 [to] the extent that any Class Member has entered into an
8 agreement that assigned or attempted to assign any monetary
9 claims, that agreement is **void**, invalid and of no force and
10 effect. Class Members receiving awards are, by definition,
11 cognitively impaired . . . Nevertheless, under the principle of
12 rescission, Class Members should return to the Third-Party
13 Funder the amount already paid to them.

14 ECF No. 9517. (Emphasis added).

15 17. Mr. Wright is a class member of *In Re: National Football League Players'*
16 *Concussion Injury Litigation*. As a class member, Mr. Wright is entitled to an award of
17 approximately \$1,900,000.00. From this amount certain attorneys' fees and liens are
18 being withheld.

19 18. On or about October 5, 2016, Mr. Wright and Thrivest entered into an
20 assignment agreement (subsequently held to be void) wherein Mr. Wright assigned some
21 \$570,000.00 of his expected payout from the NFL Concussion Settlement to Thrivest. In
22 exchange for assigning \$570,000.00 of his expected payout, Mr. Wright received
23 consideration of only \$207,392.93.
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1 19. Pursuant to the terms of the NFL Concussion Settlement Agreement and
2 this Court's Order entered December 8, 2017, the agreement between Mr. Wright and
3 Thrivest is void ab initio.
4

5 20. Thrivest seeks to compel arbitration in its dispute with Mr. Wright over the
6 void assignment agreement between the parties.
7

8 21. Thrivest admits that Pennsylvania law governs the arbitration provision of
9 the assignment agreement. *See Amended Petition to Compel Arbitration 7: ¶ 31*.
10

11 22. Prior to the agreement with Thrivest, Mr. Wright entered an assignment
12 agreement, which was subsequently held to void by this Court's Order of December 8,
13 2017, with Cash4Cases, Inc ("Cash4Cases").

14 23. Under the Cash4Cases contract, Mr. Wright was paid \$179,790.39--
15 \$104,790.39 to retire a previous lien and \$75,000.00 paid directly to Mr. Wright. *See*
16 *Cash4Cases contract*, attached hereto and incorporated herein by this reference as Exhibit
17 "A."
18

19 24. Thrivest admits it purchased the rights of Cash4Cases under Cash4Cases'
20 contract with Mr. Wright. *See Amended Petition to Compel Arbitration 1: ¶2*.
21

22 25. Thrivest admits that under the terms of the agreement between Mr. Wright
23 and Thrivest, Mr. Wright was paid only \$27,602.54 in cash. *See Amended Petition to*
24 *Compel Arbitration 5: ¶21*.
25

26 **FIRST PRAYER FOR DECLARATORY RELIEF**
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28

1 26. Mr. Wright incorporates by reference his previous allegations in paragraphs
2 1 to 26.

3
4 27. This Court should issue a declaration that the agreement between Mr.
5 Wright and Thrivest is void *ab initio*.

6 28. A settlement agreement has been reached in *In Re: National Football*
7 *League Players' Concussion Injury Litigation*. Said agreement prohibits assignment of
8 benefits by class members –
9

10
11 Section 30.1 No Assignment of Claims. Neither the Settlement
12 Class nor any Class or Subclass Representative or Settlement
13 Class Member has assigned, will assign, or will attempt to
14 assign, to any person or entity other than the NFL Parties any
15 rights or claims relating to the subject matter of the Class
16 Action Complaint. Any such assignment, or attempt to assign,
17 to any person or entity other than the NFL Parties any rights or
18 claims relating to the subject matter of the Class Action
19 Complaint will be void, invalid, and of no force and effect and
20 the Claims Administrator shall not recognize any such action.

21 Settlement Agreement, ECF No. 6481-1. (Emphasis added).

22 29. On December 8, 2017, this Court entered Orders declaring, in pertinent
23 part:

24 [to] the extent that any Class Member has entered into an
25 agreement that assigned or attempted to assign any monetary
26 claims, that agreement is void, invalid and of no force and
27 effect. Class Members receiving awards are, by definition,
28 cognitively impaired . . . Nevertheless, under the principle of
rescission, Class Members should return to the Third-Party
Funder the amount already paid to them.

ECF No. 9517. (Emphasis added).

30. The agreement between Thrivest and Mr. Wright is an assignment of Mr. Wright's monetary claim as a Class Member.

31. Accordingly, the pursuant to the terms of the Settlement Agreement and this Court's Orders entered December 8, 2017, the agreement between Thrivest and Mr. Wright is void *ab initio*.

SECOND PRAYER FOR DECLARATORY RELIEF

32. Mr. Wright incorporates by reference his previous allegations in paragraphs 1 to 32.

33. This Court should issue a declaration that Thrivest cannot compel Mr. Wright to arbitrate any dispute relating to the void agreement between Thrivest and Mr. Wright.

34. Thrivest admits that Pennsylvania law governs the arbitration agreement. *See Amended Petition to Compel Arbitration* 7: ¶ 31.

35. Under Pennsylvania law, arbitration cannot be compelled "when a party alleges that the contract as a whole is void *ab initio* for any reason." *FDA Packaging Inc. v. Advance Pers. Staffing, Inc.*, 73 Pa. D. & C.4th 420, 430 (Com. Pl. 2005); *See also China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.*, 334 F.3d 274, 282 (3d Cir. 2003); *see also United States v. Baird*, 218 F.3d 221, 231 (3d Cir. 2000) ("[v]oid contracts are not contracts at all and any promise therein is unenforceable"). Whether a contract is void *ab initio* is for the Court to decide. *Id. See also Buckeye Check Cashing, Inc. v.*

1 *Cardegna*, 546 U.S. 440, 444 n. 1, 126 S. Ct. 1204, 1208 n. 1, 163 L. Ed. 2d 1038 n. 1
 2 (2006) (courts, not arbitrators, should decide whether a contract is void).

3
 4 36. This Court has ruled that assignment agreements such as the one between
 5 the parties are void. *See* ¶ 29 *supra*.

6 37. Because the assignment agreement between the parties is void, no promises
 7 contained in the agreement are enforceable and Mr. Wright cannot be compelled to submit
 8 to the arbitration provisions of the agreement. *See FDA Packaging; China Minmetals;*
 9 *Buckeye*.

11 **THIRD PRAYER FOR DECLARATORY RELIEF**

12
 13 38. Mr. Wright incorporates by reference his previous allegations in paragraphs
 14 1 to 38.

15 39. This Court should issue a declaration that Mr. Wright's repayment
 16 obligation to Thrivest is \$207,392.93.

17
 18 40. Pursuant to this Court's Order entered December 8, 2017, Thrivest is
 19 entitled to be repaid, by Mr. Wright, the "amount paid to [him]."

20 41. Thrivest admits it purchased the rights of Cash4Cases under Cash4Cases'
 21 contract with Mr. Wright. *See Amended Petition to Compel Arbitration* 1: ¶ 2.

22
 23 42. Under the Cash4Cases contract, Mr. Wright was paid \$179,790.39--
 24 \$104,790.39 to retire another lender's advance and \$75,000.00 paid directly to Mr. Wright.
 25 *See Exhibit A*. Accordingly, pursuant to this Court's December 8, 2017 Order, Mr. Wright
 26 is obligated to pay to Thrivest \$179,790.39 for its interest in the Cash4Cases contract.
 27
 28

1 43. Thrivest admits that under the terms of the agreement with Thrivest, Mr.
2 Wright was paid only \$27,602.54. *See Amended Petition to Compel Arbitration* 5: ¶21.

3
4 44. Therefore, Mr. Wright has been paid a total of \$207,392.93-- \$179,790.39
5 under the Cash4Cases agreement and \$27,602.54 directly from Thrivest.

6 45. Therefore, pursuant to this Court's Order entered December 8, 2017, Mr.
7 Wright's owes Thrivest \$207,392.93 -- \$179,790.39 for Thrivest's interest in the
8 Cash4Cases agreement and \$27,602.54 advanced by Thrivest.
9

10 **FOURTH CLAIM FOR RELIEF – MR. WRIGHT IS ENTITLED TO AN**
11 **AWARD OF ATTORNEYS' FEES PURSUANT TO ARIZONA REVISED**
12 **STATUTE § 12-341.01(A)**

13 **A. The Court should apply Arizona law to this case.**

14 **1. The choice of law provision of the parties' agreement is not**
15 **enforceable.**

16 46. Mr. Wright incorporates by reference his previous allegations in paragraphs
17 1 to 45.

18 47. No promise in a void contract can be enforced. *United States v. Baird*, 218
19 F.3d 221, 231 (3d Cir. 2000).
20

21 48. As discussed *supra*, the parties' assignment agreement is void by Order of
22 this Court entered December 8, 2017.
23

24 49. Because the assignment agreement is void, none of the provisions therein
25 are enforceable. *Baird*. Thus, the choice of law provision in the assignment agreement is
26 not enforceable.
27
28

1 **2. Under Pennsylvania choice of law rules, this Court should apply**
2 **Arizona law.**

3 50. When sitting in diversity, a federal court must generally apply the choice of
4 law rules of the state in which it sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487,
5 61 S. Ct. 1020, 85 L. Ed. 1477 (1941). This Court sits in Pennsylvania and therefore,
6
7 should apply Pennsylvania choice of law rules to this case.

8 51. Where a conflict between the laws of forums exists, “Pennsylvania courts
9 are to apply the law of the forum with the ‘most interest in the problem’” or the law of
10 the state that has the “greater interest in the application of its law.” *Hammersmith v. TIG*
11 *Ins. Co.*, 480 F.3d 220, 229 (3d Cir. 2007).

12
13 52. “The first step in a choice of law analysis under Pennsylvania law is to
14 determine whether an actual conflict exists between the laws of the competing states. If
15 no actual conflict exists, further analysis is unnecessary.” *Budtel Assocs., LP v. Cont’l*
16 *Cas. Co.*, 2006 PA Super 370, ¶ 9-12, 915 A.2d 640, 633-644 (2006). An actual conflict
17 exists if “there are relevant differences between the laws.” *Hammersmith*, 480 F.3d at 230.
18
19

20 53. If an actual conflict exists, it is classified as “true,” “false,” or “unprovided-
21 for.” *McDonald v. Whitewater Challengers, Inc.*, 2015 PA Super 104, 116 A.3d 99, 107
22 (2015). A true conflict occurs “when the governmental interests of both jurisdictions
23 would be impaired if their law were not applied.” *Garcia v. Plaza Oldsmobile, Ltd.*, 421
24 F.3d 216, 220 (3d Cir.2005). If a true conflict is found, then the court must determine
25 “which state has the greater interest in the application of its law.” *McDonald*, 116 A.3d
26 at 109.
27
28

1 54. “A false conflict exists if only one jurisdiction's governmental interests
2 would be impaired by the application of the other jurisdiction's law. In such a situation,
3 the court must apply the law of the state whose interests would be harmed if its law were
4 not applied.” *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 187 (3d Cir.1991). In
5 “unprovided-for” cases, “neither jurisdiction's interests would be impaired if its laws are
6 not applied.” *Garcia*, 421 F.3d at 220.
7

8
9 55. When there is a true conflict in a contract action, Pennsylvania courts
10 examine “(1) the place of negotiation, contracting, and performance of the contract in
11 question; (2) the location of the subject matter of the contract; and (3) the parties'
12 citizenship.” *Aircraft Guar. Corp. v. Strato-Lift, Inc.*, 951 F. Supp. 73, 77 (E.D. Pa. 1997).
13

14 56. Arizona and Pennsylvania have differing statutory schemes with regard to
15 awards of attorneys’ fees in actions arising out of contract. Arizona explicitly provides
16 for awards of attorneys’ fees to the prevailing party in cases arising out of contract. A.R.S.
17 § 12-341.01(A). The public policy purpose behind this statute is to mitigate the burden of
18 the expense of litigation to establish a just claim or defense. A.R.S. § 12-341.01(B).
19

20
21 57. In contrast, Pennsylvania applies the American Rule, and generally does
22 not award attorneys’ fees to the prevailing party, with no statutory exception for cases
23 arising out of contract.
24

25 58. Accordingly, there is an actual conflict between the laws of Pennsylvania
26 and Arizona regarding the issue of attorneys’ fees in this case.
27
28

1 59. Here, Arizona's governmental interests would be impaired by application
2 of Pennsylvania law. Mr. Wright, a citizen of Arizona, would be forced to bear the burden
3 of establishing a defense in litigation brought over a contract already deemed to be void
4 by this Court. Arizona's stated interest is to protect its citizens from such a burden.
5
6 Conversely, Pennsylvania's governmental interest would not be harmed by application of
7 Arizona law. Pennsylvania has no governmental interest in protecting its citizens, who
8 engage in litigation over contracts already deemed void by this Court, from having to pay
9 innocent third parties' attorneys' fees.
10

11 60. Because only Arizona's governmental interest would be impaired by
12 application of Pennsylvania law, a false conflict exists. *Lacey v. Cessna Aircraft Co.*, 932
13 F.2d 170, 187 (3d Cir.1991). Therefore, this Court should apply Arizona law. *Id.*
14

15 **B. Mr. Wright is entitled to an award of attorneys' fees under Arizona law.**
16

17 61. In Arizona, attorney's fees are recoverable in cases arising out of a contract.
18 A.R.S. § 12-341.01(A). This includes cases in which a contract is entered into and later
19 found void. *Marcus v. Fox*, 150 Ariz. 333, 335, 723 P.2d 682, 684 (1986). The public
20 policy purpose behind this statute is to mitigate the burden of the expense of litigation to
21 establish a just claim or defense. A.R.S. § 12-341.01(B).
22

23 62. Here, Thrivest is attempting to litigate an issue arising under a void contract.
24 Therefore, if Mr. Wright prevails, he is entitled to an award of attorneys' fees pursuant to
25 A.R.S. § 12-341.01(A) and the Arizona Supreme Court's holding in *Marcus*.
26
27
28

CERTIFICATE OF SERVICE

I, Casey Green, hereby certify that the foregoing was electronically filed on this date; it is available for viewing and downloading on the Court's CM/ECF system; and it will be served on all counsel of record via the Court's CM/ECF system.

Dated: March 28, 2019

/s/ Casey Green
Casey Green, Esquire

Counsel for Respondent
Toby L. Wright